

(iii) You must apply the rate established under this paragraph to the gross proceeds derived from the sale of electricity under applicable MMS rules at 30 CFR part 206, subpart H.

(2) If you or your affiliate sell(s) geothermal resources produced from or attributed to your lease at arm's length to a purchaser who uses those resources to generate electricity, then the royalty rate is 10 percent. You must apply that rate to the gross proceeds derived from the arm's-length sale of the geothermal resources under applicable MMS rules at 30 CFR part 206, subpart H.

(b) For leases issued before August 8, 2005, whose royalty terms are modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, BLM will establish royalty rates under paragraphs (b)(1) and (b)(2) of this section.

(1) For leases that, prior to submitting a request to modify the royalty rate terms of the lease under section 3212.26, produced geothermal resources for the commercial generation of electricity, or to which geothermal resource production for the commercial generation of electricity was attributed:

(i) If you or your affiliate uses geothermal resources produced from or attributed to your lease to generate and sell electricity, BLM will establish a rate on a case-by-case basis that it expects will yield total royalty payments over the life of the lease equivalent to those that would have been paid under the royalty rate in effect for the lease before August 5, 2005. The rate is not limited to the range of rates specified in 30 U.S.C. 1004(a)(1). You must apply the rate that BLM establishes to the gross proceeds derived from the sale of electricity under applicable MMS rules at 30 CFR part 206, subpart H.

(ii) If you or your affiliate sells geothermal resources produced from or attributed to your lease at arm's length to a purchaser who uses those resources to generate electricity, the royalty rate is the rate specified in the lease instrument. You must apply that rate to the gross proceeds derived from the arm's-length sale of the geothermal resources under applicable MMS rules at 30 CFR part 206, subpart H.

(2) For leases that, prior to submitting a request to modify the royalty rate terms of the lease under section 3212.26, did not produce geothermal resources for the commercial generation of electricity, and to which geothermal resource production for the commercial generation of electricity was not attributed, BLM will establish royalty rates equal to those set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable.

(c) For leases issued before August 8, 2005, whose royalty terms are not modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, and for leases issued in response to applications pending on that date for which the lessee does not make an election under § 3200.8(b)(1), the royalty rate is the rate prescribed in the lease instrument.

**§ 3211.18 What is the royalty rate on geothermal resources produced from or attributable to my lease that are used directly for purposes other than commercial generation of electricity?**

(a) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which the lessee does not make an election under § 3200.8(b)), and for leases issued before August 8, 2005, whose royalty terms are modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25:

(1) If you or your affiliate use(s) the geothermal resources directly and do(es) not sell those resources at arm's length, no royalty rate applies. Instead, you must pay direct use fees according to a schedule published by MMS under MMS regulations at 30 CFR 206.356.

(2) If you or your affiliate sell(s) the geothermal resources at arm's length to a purchaser who uses the resources for purposes other than commercial generation of electricity, your royalty rate is 10 percent. You must apply that royalty rate to the gross proceeds derived from the arm's-length sale under applicable MMS regulations at 30 CFR part 206, subpart H.

(3) If you are a lessee and you are a state, tribal, or local government, no royalty rate applies. Instead you must

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pay a nominal fee established under MMS rules at 30 CFR 206.366.

(b) For leases issued before August 8, 2005, whose royalty terms are not modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, and for leases issued in response to applications pending on that date for which the lessee does not make an election under § 3200.8(b), the royalty rate is the rate prescribed in the lease instrument.

(c) For purposes of this section, direct use of geothermal resources includes generation of electricity that is not sold commercially and that is used solely for the operation of a facility unrelated to commercial electrical generation.

### **§ 3211.19 What is the royalty rate on byproducts derived from geothermal resources produced from or attributable to my lease?**

(a) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which no election is made under § 3200.8(b)(1)), and for leases issued before August 8, 2005, for which an election is made under § 3200.7(a)(2):

(1) The royalty rate for byproducts derived from geothermal resource production that are identified in Section 1 of the Mineral Leasing Act (MLA), as amended (30 U.S.C. 181), is the royalty rate that is prescribed in the MLA or in the regulations implementing the MLA for production of that mineral under a lease issued under the MLA; and

(2) For a byproduct that is not identified in 30 U.S.C. 181, no royalty is due.

(b) For leases issued before August 8, 2005, for which no election is made under § 3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under § 3200.8(b)(1), the royalty on all byproducts is the rate prescribed in the lease instrument, or if none is prescribed in the lease instrument, the rate prescribed in 43 CFR 3211.10(b) (2004).

### **§ 3211.20 How do I credit advanced royalty towards royalty?**

You may credit advanced royalty toward royalty under MMS regulations at 30 CFR 218.305(c).

### **§ 3211.21 When do I owe minimum royalty?**

(a) You do not owe minimum royalties for:

(1) Leases issued on or after August 8, 2005 (other than for leases issued in response to applications that were pending on that date for which no election is made under § 3200.8(b)(1)); and

(2) Leases issued before August 8, 2005, for which an election is made under § 3200.7(a)(2).

(b) For leases issued before August 8, 2005, for which no election is made under § 3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under § 3200.8(b)(1), you owe minimum royalty of \$2.00 per acre (to be paid to MMS) when:

(1) You have not begun actual production following the BLM's determination that you have a well capable of commercial production; or

(2) The value of actual production is so low that royalty you would pay under the scheduled rate is less than \$2.00 per acre (this applies to situations of no production, as long as the lease remains in effect).

## **Subpart 3212—Lease Suspensions, Cessation of Production, Royalty Rate Reductions, and Energy Policy Act Royalty Rate Conversions**

### **§ 3212.10 What is the difference between a suspension of operations and production and a suspension of operations?**

(a) A suspension of operations and production is a temporary relief from production obligations which you may request from BLM. Under this paragraph you must cease all operations on your lease.

(b) A suspension of operations is when BLM orders you, to stop production temporarily in the interest of conservation.